

STATE OF MICHIGAN
BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

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In the matter, on the Commission's own motion,)	
to commence consideration of the various regulatory)	
reviews associated with CONSUMERS ENERGY)	
COMPANY's decision to terminate early its)	
power purchase agreement with Entergy Nuclear)	Case No. U-18218
Palisades, LLC, a subsidiary of Entergy Corporation,)	
for the output of electric power from the Palisades)	
Nuclear Power Plant.)	
_____)	

In the matter of the application of)	
CONSUMERS ENERGY COMPANY)	
for approval of a power supply cost recovery plan)	Case No. U-18142
and for authorization of monthly power supply cost)	
recovery factors for the year 2017.)	
_____)	

At the December 20, 2016 meeting of the Michigan Public Service Commission in Lansing,
Michigan.

PRESENT: Hon. Sally A. Talberg, Chairman
Hon. Norman J. Saari, Commissioner
Hon. Rachael A. Eubanks, Commissioner

ORDER

On December 8, 2016, Consumers Energy Company (Consumers) announced that it reached an agreement with Entergy Corporation (Entergy) for early termination of a power purchase agreement (PPA) whereby Consumers purchases electricity generated by the Palisades Nuclear Power Plant (Palisades) from Entergy Nuclear Palisades, LLC (ENP), a subsidiary of Entergy. The power purchase agreement in question provides for Consumers to purchase nearly all of

Palisades' electric generation, and was approved by the Commission in the March 27, 2007 order in Case No. U-14992. The PPA has a 15-year term, and was intended to remain in effect until April 11, 2022. Consumers announced that early termination of the PPA is expected to lower customer costs by up to \$172 million, and contends that early termination makes sense in light of changed market conditions and the existence of less expensive alternatives to the power offered under the PPA.

At the same time, Entergy announced that it plans to close Palisades permanently on October 1, 2018.¹ In its press release, Entergy reports that the transaction is expected to result in a total of \$344 million in gross savings derived from the replacement of relatively higher-priced nuclear generation with lower cost alternatives. The savings would be split evenly between a buyout payment to Entergy and a reduction in Consumers' customers' rates. Entergy would receive a \$172 million buyout payment from Consumers in exchange for early termination of the PPA. The remaining \$172 million would be allocated to Consumers' customers, who, according to information provided by Consumers and Entergy, are projected to receive a reduction in costs from 2018 to 2022, the remainder of the life of the PPA. Entergy reports that Consumers and Entergy will agree to terminate the PPA effective May 31, 2018, at which time CMS Energy and ENP will enter into a new PPA under which Palisades will continue to operate until October 1, 2018. Entergy indicates that it will notify the Midcontinent Independent System Operator, Inc. (MISO) and the U.S. Nuclear Regulatory Commission (NRC) of its intent to permanently close

¹ In its press release, Entergy indicates that approximately 600 employees currently work at Palisades. Consumers states that it will consider alternative job placements for up to 180 appropriately-skilled Palisades employees.

and decommission Palisades.² Entergy states that Palisades generates 811 megawatts (MW) of carbon-free electricity, enough to power more than 800,000 homes.

Reports in the financial and energy trade press, as well as information on Consumers' investor relations website, indicate that Consumers is determining potential sources of replacement power, but currently intends to use natural gas, renewable energy, and energy efficiency to replace the 811 megawatts (MW) of power. Consumers also intends to recover through rates a securitization of the \$172 million buyout fee due to Entergy. Consumers claims that the early termination will save customers approximately \$45 million per year for the May 2018 to April 2022 time period. Consumers indicates that it will shortly seek Commission approval to securitize the buyout fee.

In the March 27, 2007 order in Case No. U-14992 (2007 order), pp. 55-65, the Commission provided two approvals for the PPA. First, the Commission approved the PPA pursuant to MCL 460.6j(13)(b), which provides that the applicant must seek prior approval from the Commission for capacity charges associated with power purchased for a period in excess of six months, or else suffer a disallowance in its power supply cost recovery (PSCR) reconciliation. 2007 order, p. 60. Second, the Commission approved the PPA as follows:

Given these findings and in light of the facts and circumstances at the time that Consumers and ENP executed the PPA, the Commission finds that the PPA is reasonable and in the public interest. However, as conceded by Consumers, granting this second form of regulatory approval will not shield the utility from continuing Commission scrutiny, which is a major concern expressed by both MEC/PIRGIM and the Attorney General. While Consumers correctly notes that the law is clear that the review of the reasonableness and prudence of a

² Ultimately, MISO will be required to perform an Attachment Y study to determine whether closing Palisades will endanger the reliability of the bulk electric system. It should be noted that MISO's Attachment Y study is separate from the Commission's proceeding, and involves a determination by MISO of whether the plant is necessary to maintain reliable operations of the transmission system; if closure of the plant would impair such reliability, MISO would require its continued operation as a system support resource until transmission upgrades or other solutions are implemented. The MISO Attachment Y does not encompass resource adequacy considerations – or whether there is adequate capacity locally or regionally to meet the planning reserve requirements and other provisions in Module E of MISO's tariff.

utility's long-term purchased power arrangements must be resolved in light of the circumstances at the time that the contract was executed, the fact remains that the Commission is required by Act 304 to conduct both an annual PSCR plan proceeding and an annual PSCR reconciliation proceeding. MCL 460.6j(3) requires Consumers to file an annual PSCR plan describing "all major contracts and power supply arrangements entered into by the utility for providing power supply during the specified 12-month period."

2007 order, pp. 63-64. It is important to note that costs under the PPA remain subject to review by the Commission in Act 304 proceedings, as does the utility's five-year forecast. MCL 460.6j(4), (7).

The PPA provides for early termination, but only as follows: "Promptly following Seller's [ENP] determination that operation of the Facility has become materially and economically adverse such that continued operation of the Facility is no longer feasible, prudent and/or sustainable, Seller shall provide twelve (12) months' written notice to Buyer . . . that Seller will permanently retire the Facility at the expiration of the notice period." Case No. U-14992, Exhibit A-1, p. 31. The PPA does not provide for fees or buyout payments in the existing termination clause. ENP has apparently provided no termination notice to Consumers, and the decision to terminate early has, instead, come through mutual agreement.

Consumers' plan to handle the effects of this far-reaching plan on future resource adequacy and the impact to ratepayers first in a securitization proceeding, and to then review the further effects in a series of succeeding stand-alone accounting and ratemaking proceedings would not provide the Commission with the comprehensive information needed in an orderly and logical process to make an informed decision. Securitization is the process by which a utility, following the issuance of a financing order by the Commission, replaces relatively high-cost debt and equity with lower-cost debt in the form of securitization bonds. MCL 460.10h-460.10o. An application for a financing order is filed pursuant to the Customer Choice and Electricity Reliability Act, 2000 PA 141 (Act 141) and 2000 PA 142 (Act 142), MCL 460.1 *et seq.*, that, among other things,

allows certain utilities the option of reducing their costs through the issuance of securitization bonds. A securitization case is a limited proceeding. MCL 460.6i(1) provides that:

Upon the application of an electric utility, if the commission finds that the net present value of the revenues to be collected under the financing order is less than the amount that would be recovered over the remaining life of the qualified costs using conventional financing methods and that the financing order is consistent with the standards in subsection (2), the commission shall issue a financing order to allow the utility to recover qualified costs.

Only the applicant may seek rehearing of a financing order. MCL 460.10i(7). Any party may seek appeal from the Court of Appeals; however, review is limited to whether the order “conforms to the constitution and laws of this state and the United States and is within the authority of the commission under this act.” MCL 460.10i(8); *see, Attorney General v Public Service Comm*, 247 Mich App 35, 42-43; 634 NW2d 710 (2001). Securitization cases also carry an extremely tight ninety day deadline within which the Commission is expected to act. MCL 460.6i(6).³ Despite its limited nature, the securitization case would require the Commission to make several determinations related to the appropriate amount of the buyout fee, when the Commission had not yet made the prerequisite determination of whether the broader plan for replacement of Palisades is reasonable and prudent and in the best interest of ratepayers. Such determination is inextricably tied to the buyout as the broader plan and associated cost recovery decisions on Consumers’ proposed replacement portfolio – not merely market price projections – will influence the real impact on customers and resource adequacy.

³ The Commission observes that Acts 141 and 142 contain no sanction that will be visited upon the Commission for noncompliance with the ninety day deadline; thus making that deadline a goal rather than a requirement. *Detroit Edison Co v Public Service Comm*, 127 Mich App 499, 508-510; 342 NW2d 273 (1983). “The complexity of a case may result in lengthier proceedings.” *ABATE v Public Service Comm*, 430 Mich 33, 39, n. 4; 420 NW2d 81 (1988).

A ninety day contested case proceeding is inadequate for making the many determinations that the Commission will be required to make related to Consumers' recently-announced plan. Today, the Commission opens the docket in Case No. U-18218 to facilitate the process of receiving initial information that the Commission will need to begin evaluating Consumers' plans. The Commission observes that this information will eventually be required in order to determine which actions are in the public interest and will be reviewed for prudence as part of a holistic plan that includes detailed analysis of the impact on reliability, customer costs, and the environment. The Commission recognizes that calculations related to resource adequacy and replacement power, and the buyout fee, contain an array of assumptions that would be appropriately addressed through an open process with technical review and stakeholder input.

The Commission emphasizes that it considers Palisades to be a significant contributor to the state's electric generation mix, producing 811 MW of low-emission, baseload power, enough to power 800,000 Michigan households. Publically and repeatedly, the Commission has voiced its concerns related to resource adequacy in the near to medium term, and the loss of this generation without immediate sufficient and reliable replacement sources would introduce additional uncertainty to the state's energy picture.⁴ Further, the complexities of operating and decommissioning nuclear plants warrant additional considerations when making a decision as critical as a closure compared to other types of generation, such as the storage of spent nuclear fuel and ongoing care of the site.

⁴ The Commission takes note of House Resolution No. 410, adopted on December 15, 2016, asking the Commission to reject the early PPA termination in order to safeguard electric reliability. The resolution can be viewed here: <http://www.legislature.mi.gov/documents/2015-2016/resolutionadopted/House/pdf/2016-HAR-0410.pdf>

Accordingly, the Commission cannot make isolated decisions that do not take into account the wide-ranging impacts the closure of Palisades would have. Because Consumers has represented that its plan would benefit customers, the Commission seeks to build a technical understanding of how Consumers has arrived at this conclusion and communicate its most pressing concerns at this early stage. Critical to this process is the order in which information is produced and evaluated. This inquiry necessarily entails a full examination of whether the early termination of the PPA and replacement of such resource with alternative energy and capacity sources is a reasonable and prudent course of action, and, if so, whether it will provide cost savings to customers, and the amount thereof, while not jeopardizing reliability. Only after these determinations have been made will the Commission address the method by which the authorized amount shall be recovered from ratepayers.

The Commission is mindful of the need for certainty regarding the final disposition of these complex issues as they directly affect resource adequacy planning in the state and region, employees of Palisades, local and state governments, school districts, and Consumers' customers as well as the financial and business plans of Entergy and Consumers. While the Commission is not in a position to lay out a detailed procedural schedule at this time, the Commission is committed to addressing these issues in a timely manner in accordance with the approach outlined above.

To that end, the Commission directs the utility to file the following information, as expeditiously as possible.

- (1) Provide a detailed description of the alternatives that were considered by Consumers and/or Entergy in lieu of Palisades' closure, including whether any efforts – formal or informal – were made to sell the facility. Additionally, describe any efforts made to renegotiate the PPA with Consumers, and/or with any other utility, in lieu of early termination of the PPA. If neither sale nor renegotiation were pursued, explain why not.

- (2) Provide documentation evidencing the analysis that results in the \$344 million savings, including supporting calculations of each component in actual dollars and net present value. Include details regarding all assumptions relied upon for all calculations as well as a sensitivity analysis to account for varying market conditions. This information should reflect projected market purchases as compared to the capacity and energy costs under the PPA to support the projected cost savings, including evidence of the difference between costs to customers under the PPA and market costs after the loss of Palisades' capacity and energy output.
- (3) Provide detailed data and analysis on the cost of any new energy and capacity sources Consumers seeks to use to replace Palisades, and expected ratepayer savings compared to the market estimates referenced under item (2) above; such cost analysis should include sensitivity analyses related to the preferred replacement portfolio to account for cost drivers such as fuel costs as well as any additional resource options in the event cost, timing, reliability, regulatory considerations, or other factors affect Consumers' ability to execute its plan.
- (4) Identify specific resources that will be available in a timely manner to replace the capacity and energy provided by Palisades, while again accounting for additional constraints caused by the loss of 800 MW of generation. Provide detailed information on the analyses and forecasts that have been relied upon in determining that supply and demand in Zone 7 will be adequate after the early termination of the PPA, including a description of the assumptions made regarding Zone 7 with respect to energy resources, capacity, and load. Identify any timing issues with the proposed replacement portfolio and execution risks with Consumers' plan.
- (5) Explain the bid process used for determining how replacement capacity will be procured. As applicable, Consumers should provide an analysis of how it will approach compliance with the Code of Conduct and affiliate guidelines with respect to the replacement power. Additionally, provide a detailed description of any certificate of need (CON) filing planned for the 2017-2022 time period.
- (6) The Commission will be required to determine the amount of any buyout fee to be recovered through rates and the appropriate cost recovery mechanism. Provide detailed information on all available cost recovery and financing options, and how each compares in terms of ratepayer costs and benefits.
- (7) Provide a detailed analysis of the adequacy of the amounts in the decommissioning trust funds, including a description of the plan for continuous, decades-long monitoring of the site to ensure the safety of the public and protection of the environment. Additionally, provide updated information on the continued safe storage of spent nuclear fuel at the Big Rock Point facility.
- (8) Provide information on the analysis of the effect of closing Palisades on emissions such as oxides of nitrogen, sulfur dioxide, and carbon dioxide, as well as the effect on fuel diversity.

- (9) Provide information on bulk electric system impacts from the closure of Palisades and whether any transmission upgrades would be expected in order to allow for closure of the plant as proposed by Entergy in October 2018.

Finally, the Commission directs Consumers to file a revised five-year forecast in its pending 2017 PSCR plan case, Case No. U-18142. Consumers' recent announcements have clearly rendered the filed forecast obsolete, and the Commission finds that it will be necessary to review a forecast that reflects the utility's actual plans.

THEREFORE, IT IS ORDERED that Consumers Energy Company shall file the information described in this order as expeditiously as possible in the docket in Case No. U-18218; and shall file an updated five-year forecast in Case No. U-18142 within 30 days of the date of this order.

The Commission reserves jurisdiction and may issue further orders as necessary.

Any party desiring to appeal this order must do so by the filing of a claim of appeal in the Michigan Court of Appeals within 30 days of the issuance of this order, under MCL 462.26. To comply with the Michigan Rules of Court's requirement to notify the Commission of an appeal, appellants shall send required notices to both the Commission's Executive Secretary and to the Commission's Legal Counsel. Electronic notifications should be sent to the Executive Secretary at mpscdockets@michigan.gov and to the Michigan Department of the Attorney General - Public Service Division at pungpl@michigan.gov. In lieu of electronic submissions, paper copies of such notifications may be sent to the Executive Secretary and the Attorney General - Public Service Division at 7109 W. Saginaw Hwy., Lansing, MI 48917.

MICHIGAN PUBLIC SERVICE COMMISSION

Sally A. Talberg, Chairman

Norman J. Saari, Commissioner

Rachael A. Eubanks, Commissioner

By its action of December 20, 2016.

Kavita Kale, Executive Secretary